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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

APR 19 2013

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YAKIMA, WASHINGTON

13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF WASHINGTON

16 PEDRO MENDEZ GIRON, JOSE
17 SANTOS MARQUEZ, JOSE SANTOS
18 MEZA, LUCAS LOPEZ LOPEZ,
19 DARINEL SANTOS MARQUEZ,
20 JOAQUIN SOLIZ ROBLES,
21 ADOLFO BAUTISTA PEREZ,
22 MARIANO PEREZ PEREZ, PEDRO
23 GUZMAN GIRON, JUAN LOPEZ
24 GOMEZ, Vicensio RAMIREZ
25 ROBLEDO, ABRAHAM GIRON
26 SANTIZ, EDGAR MORALES CRUZ,
27 TAYDE DE LEON, JAVIER JIMENEZ
28 LUNA, and EMIR MORALES PEREZ

No. CV-13-153-JLQ

COMPLAINT FOR DAMAGES

Plaintiffs,

vs.

5 STAR FORESTRY, LLC, MICHAEL
DOMINGUEZ and LISA
DOMINGUEZ, a marital community,

21 COMPLAINT FOR DAMAGES - 1

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Tel. (509) 574-4234 Fax (509) 574-4238

1 Defendants.

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3 **I. PRELIMINARY STATEMENT**

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1. Plaintiffs were recruited from Mexico to work for defendant forestry contractors as temporary foreign workers under the H-2B program in 2010. Defendants operate as forestry contractors in Washington, Idaho, Mississippi, Montana, and Louisiana. Plaintiffs worked for defendants in Montana, Idaho and Washington State.

2. Plaintiffs bring this action for damages based on the defendants' violations of plaintiffs' rights under the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801 *et seq.* ("AWPA"), The Farm Labor Contractor Act, RCW 19.30.010 *et seq.* ("FLCA"), the Fair Labor Standards Act, 29 U.S.C. §§201 *et seq.* ("FLSA"), and the Washington Wage Act, RCW 49.52.050(2).

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4 **II. JURISDICTION AND VENUE**

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3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal Question), 29 U.S.C. § 1854 (AWPA); and 29 U.S.C. §216 (b) (FLSA).

4. This Court has jurisdiction over plaintiffs' state law claims pursuant to 28 U.S.C. § 1367 (Supplemental Jurisdiction).

5. The proper venue for this action is in the Eastern District of Washington pursuant to 28 U.S.C. § 1391. A substantial part of the events or

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1 omissions giving rise to plaintiffs' claims occurred in Okanagon County,
2 Washington.

III. PARTIES

Plaintiffs

6. At all times relevant to this complaint, plaintiffs were migrant agricultural workers within the meaning of 29 U.S.C. §1802(8) (A) and agricultural employees within the meaning of FFLCA, RCW 19.30.010(5).

7. Plaintiffs arrived in the United States to work for 5 Star Forestry, LLC in April 2010.

8. Plaintiffs are all citizens of Mexico and were admitted as temporary foreign workers under the H-2B provisions of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b), to perform forestry work for defendants.

9. Defendant 5 Star Forestry, LLC is a limited liability company, having its principal place of business in Kooskia, Idaho, that is licensed to do and does business in the State of Washington.

10. At all times relevant to this Complaint, defendant 5 Star Forestry, LLC was a farm labor contractor within the meaning of 29 U.S.C. §1802(7) and RCW 19.30.010(2), licensed in the State of Washington. To ensure compliance with the provisions of the FFLCA, 5 Star Forestry, LLC has provided security to the Washington State Department of Labor and Industries in the form of an assigned

1 account held at Kamiah Community Credit Union in the amount of \$10,000.

2 11. At all relevant times, defendants Michael and Lisa Dominguez have
3 constituted a marital community. All acts alleged to have been done by either
4 defendant were done on behalf of the marital community. Lisa Dominguez is sued
5 solely as a member of the marital community.

6 12. At all relevant times, defendant Michael Dominguez ("Defendant
7 Dominguez") owned, operated and/or managed Defendant 5 Star Forestry, LLC
8 and as such was a farm labor contractor for purposes of 29 U.S.C. § 1802(7) and
9 RCW 19.30.010(2), and an employer for purposes of 29 U.S.C. § 203(d) and RCW
10 49.30.010(3).

11 **BACKGROUND REGARDING H-2B PROGRAM**

12 13. The H-2B program enables employers to hire temporary foreign
13 workers subject to obtaining certification by the U.S. Department of Labor
14 (hereinafter "DOL"). 20 C.F.R. § 655 Subpart A (2010).

15 14. In order to obtain an H-2B certification, an employer must submit its
16 proposed job offer to DOL establishing that it needs non-agricultural services. 20
17 C.F.R. § 655.6.

18 15. If the job opportunity involves multiple worksites within an area of
19 intended employment and different prevailing wage rates exist for the same
20 opportunity and staff level within the area of intended employment, the prevailing

1 wage shall be based on the highest applicable wage among all relevant worksites.

2 20 C.F.R. § 655.10(b)(3).

3 16. The H-2B regulations require, among other things, that job offers
4 specify:

5 a. All deductions not required by law that employer will make
6 from worker's paycheck.

7 b. All deductions must be reasonable; however,

8 c. An employer subject to the FLSA may not make deductions
9 that would violate the FLSA. 20 C.F.R. Subpart A § 655.22(g)(1).

10 17. H-2B employers must also agree in their job offers to abide by
11 obligations imposed on them by the H-2B regulations and to "comply with the
12 applicable federal, state, and local employment-related laws and regulations,
13 including employment-related health and safety laws" 20 C.F.R. § 655.22(d).

14 **IV. STATEMENT OF FACTS**

15 18. Defendants applied for permission to bring H-2B workers to the U.S.
16 by filing an Application for Alien Employment Certification, Form ETA 9142
17 (herein after "Clearance Order") with the United States Department of Labor. 20
18 C.F.R. Subpart A § 655.20(a) (2008).

19 19. Each clearance order sets forth the number of workers requested,
20 period of employment, rate of pay, and type of work being offered by defendants.

1 20. DOL granted defendants partial certification under the H-2B
2 program for 63 forest and conservation workers (tree planters) from April 1, 2010
3 to December 31, 2010.

4 21. The Clearance Order provided that the workers would be employed as
5 tree planters to work in the state of Mississippi from April 1, 2010 through
6 December 31, 2010, at a wage of \$13.27 per hour, for 40 hours per week.

7 22. The defendants recruited plaintiffs from Chiapas, Mexico to work for
8 them pursuant to the above Clearance Order.

9 23. Defendants used labor contractor U.S. Opportunities to recruit
10 plaintiffs.

11 24. Plaintiffs paid for their own transportation to the U.S. border from
12 their home in Chiapas, as well as incurring costs necessary to accept work with
13 defendants, including the costs for a visa, passport, hotel stay at the border, and
14 border crossing fees. These costs were not reimbursed by defendants.

15 25. All of these costs were necessary to the workers' employment with 5
16 Star Forestry, LLC, and were incurred primarily for defendants' benefit before the
17 workers' first paycheck.

18 26. The costs that these plaintiffs incurred for defendants' benefit before
19 their first paycheck reduced their wages below the federal minimum wage of \$7.25
20 per hour for their first week of work.

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1 27. Defendants failed to furnish to each Plaintiff a written disclosure on
2 the form prescribed by the Department of Labor and Industries at the time of their
3 recruitment stating the wages to be paid, the conditions of any transportation,
4 housing, or other employment benefit to be provided, and the terms and conditions
5 of employment, as required by FLCA at RCW 19.30.110(7).

6 28. Defendants failed to provide each plaintiff with a written disclosure
7 in their own language of the terms and conditions of employment at the time of
8 their recruitment that complied with AWPA.

9 29. Plaintiffs all arrived in Montana from Mexico by bus in April 2010 in
10 a group of 44 H-2B workers, all from Chiapas, Mexico.

11 30. The bus fare from Laredo Texas to Missoula, Montana cost \$203.00
12 for each plaintiff, the cost of which was advanced by U.S. Opportunities.

13 31. Defendants failed to provide plaintiffs with the 32-40 hours per week
14 of work promised in the Clearance Order for their first eight weeks of employment.

15 32. All plaintiffs but Joaquin Soliz Roblero and Tayde de Leon were
16 employed by Defendants 5 Star Forestry, LLC and Michael Dominguez in
17 Montana, Idaho, and Washington from late April until August of 2010.

18 33. Plaintiff De Leon was given his first opportunity to work by
19 defendants in May, 2010 and was terminated by defendants in June, 2010.

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1 34. Plaintiffs Tayde De Leon, Jose Santos Marquez, Jose Santos Meza,
2 Javier Jimenez Luna, Adolfo Bautista, Darinel Santos Marquez, Vicensio Ramirez
3 Robledo, Edgar Morales Cruz, Emir Morales Perez were part of a group of H-2B
4 workers housed in a trailer in Montana when they first arrived in the U. S. without
5 work or adequate food.

6 35. The trailer failed to meet applicable safety and health standards.

7 36. In or about late May, 2010, defendants transported all the plaintiffs to
8 Washington State to perform forestry work.

9 37. Defendants' recruitment of plaintiffs to perform forestry work in
10 Washington State constituted "farm labor contracting activity" within the meaning
11 of the Washington Farm Labor Contractor Act, RCW 19.30.010(3).

12 38. Defendants took deductions from plaintiffs' pay which had not been
13 authorized in advance by plaintiffs for a lawful purpose accruing to the benefit of
14 plaintiffs, including deductions labeled "expense deductions", excessive bus ticket
15 reimbursements, and fees for U.S. Opportunities.

16 39. Defendants failed to provide plaintiffs with itemized pay statements
17 with the purpose of each sum of money withheld from their wages.

18 40. The pay statements that defendants provided to plaintiffs failed to
19 state the number of hours worked when the plaintiffs worked by piece rate.

20 41. Defendants housed plaintiffs in tents at the Lake Bonaparte

21 COMPLAINT FOR DAMAGES - 8

1 campground.

2 42. The tents occupied by plaintiffs failed to meet applicable federal and
3 state substantive safety and health standards.

4 43. The tents occupied by plaintiffs were not licensed as temporary
5 worker housing by the Washington State Department of Health; nor had the tents
6 been certified by any other state or local authority as meeting applicable safety and
7 health standards.

8 44. Defendants controlled the housing in which plaintiffs lived at Lake
9 Bonaparte Campground.

10 45. Defendants did not request that any state or local agency inspect the
11 tents occupied by plaintiffs to ensure that they complied with substantive Federal
12 and State safety and health standards.

13 46. Defendants failed to post at the housing sites occupied by plaintiffs a
14 statement showing the terms and conditions of occupancy; however, defendants
15 deducted housing charges from plaintiffs' paychecks anyway.

16 47. In June 2010, plaintiffs Tayde de Leon and Joaquin Soliz Roblero
17 complained to defendant Michael Dominguez on behalf of the group of H-2B
18 workers (including plaintiffs) about unauthorized deductions from their paychecks
19 and the lack of work.

20 48. Defendant Dominguez fired plaintiffs Tayde de Leon and Joaquin

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1 Soliz Roblero for exercising their rights under the Migrant and Seasonal
2 Agricultural Worker Protection Act (AWPA) and the Farm Labor Contractor Act
3 (FLCA).

4 49. After plaintiff de Leon and Soliz Roblero were fired, the remaining
5 workers went on strike to protest the firings.

6 50. Defendant Michael Dominguez then promised to cease making
7 unauthorized deductions and to reimburse workers \$96 for a deduction from that
8 week's paycheck that had reduced plaintiffs' wages close to \$0.

9 51. Defendants continued to make unauthorized deductions from
10 plaintiffs' paychecks after promising not to do so.

11 52. Defendants continued to deduct sums from Plaintiffs' wages during
12 their employment in Washington without authorization or itemization, resulting in
13 a failure to pay wages when due.

14 53. In July, 2010 defendants took plaintiff s Adolfo Bautista Perez,
15 Edgar Morales Cruz, Jose Santos Meza, Emir Morales Perez, Javier Jimenez Luna
16 and 4 other H-2B workers to perform forestry work for 5 Star Forestry in Idaho
17 (Hereinafter, "Idaho plaintiffs"). The rest of the plaintiffs continued to work for 5
18 Star Forestry in Washington State, living at the campground in Lake Bonaparte,
19 Washington ("Lake Bonaparte plaintiffs".)

20 54. Plaintiffs sent a letter to defendant Michael Dominguez through his

1 lawyer on or about August 6, 2010, asking that he stop taking unauthorized
2 deductions from their pay checks, reimburse the deductions already taken, and
3 otherwise comply with his obligations under AWPA, the Service Contract Act, and
4 the Fair Labor Standards Act.

5 55. In this letter, plaintiffs advised defendant Dominguez that should
6 they be unable to resolve these issues by August 16, 2010, that they would file a
7 complaint with the U.S. Department of Labor.

8 56. Defendant Dominguez made threats that plaintiffs would be fired as a
9 result of this complaint.

10 57. On or about August 18, 2010, the Idaho Plaintiffs were terminated
11 from employment.

12 58. The Idaho Plaintiffs were told to sign a document stating there was
13 no more work and that they were fired.

14 59. Lake Bonaparte Plaintiffs Juan Lopez Gomez and Mariano Perez
15 Perez left their employment with defendants in early August, 2010.

16 60. On or about August 18, 2010, 5 Star Forestry foreman and agent Isaac
17 Santamaria instructed the remaining Lake Bonaparte plaintiffs to sign a statement
18 that they did not want to be represented by Northwest Justice Project or they would
19 be fired.

20 61. The Lake Bonaparte plaintiffs refused to sign the statement.

1 62. On or about August 20, 2010, the Lake Bonaparte Plaintiffs still
2 employed by defendants were told by 5 Star Forestry, LLC foreman Isaac
3 Santamaria that there was no longer work for them because of their complaints.

4 63. Earlier, Lake Bonaparte plaintiffs had been told by defendants that
5 they would have work in Washington State until the weather turned too cold, at
6 which time they would continue to have work in Mississippi until their visas
7 expired in December.

8 64. Defendant 5 Star Forestry provided a termination letter to plaintiffs
9 stating that they would be brought back to work for 5 Star Forestry in November,
10 2010.

11 65. Defendants knowingly provided false information to plaintiffs when
12 defendants promised that they would be brought back to work for defendants.

13 66. Defendants never offered plaintiffs further employment after
14 terminating them in August, 2010.

15 67. Defendants terminated all plaintiffs (except for Juan Lopez Gomez
16 and Mariano Perez Perez) from employment in retaliation for plaintiffs having
17 exercised their rights pursuant to AWPA, FLSA, FLCA and state wage laws.

18 68. Defendants were engaged in interstate commerce as defined by the
19 FLSA, 29 U.S.C. § 203(b).

20 69. Defendants failed to make, keep, and preserve a record of the
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following information:

a. The number of hours worked by plaintiffs for work paid on a piecework basis;

b. The purpose of sums being withheld from plaintiffs' pay; both in violation of RCW 19.30.110(9)(a).

70. All of the actions and omissions alleged in the paragraphs above were undertaken by the defendants either directly or through their agents.

71. Plaintiffs suffered damages as a result of defendants' actions.

V. CAUSES OF ACTION

A. Fair Labor Standards Act

72. All facts alleged above are reasserted here in support of plaintiffs' cause of action set forth below.

73. At all times relevant to this action, the plaintiffs were employed by defendants within the meaning of the FLSA.

74. Defendants violated 29 U.S.C. §206 (a), by failing to pay plaintiffs the required minimum wage for their first week of work, giving rise to a cause of action under 29 U.S.C. §216(b).

75 Defendants' violation of FLSA was willful.

76. Defendants violated the minimum wage provisions of FLSA, 29
U.S.C. § 206(a), by failing to reimburse plaintiffs during the first week of their
employment for costs they incurred primarily for the benefit of 5 Star Forestry and
Michael Dominguez.

77. These costs included the travel costs, passport fees, visa-related fees and expenses, and other fees incurred primarily for defendants' benefit that Plaintiffs had to pay in order to accept work with 5 Star Forestry.

78. When these costs are calculated as deductions from plaintiffs' first week's pay, as required by law, they cause the plaintiffs' first week's earnings to fall below the federal minimum wage for that pay period.

79. As a consequence of defendants' violation of FLSA as set out in this Cause of Action, Plaintiffs are entitled to their unpaid minimum wages, plus an additional equal amount in liquidated damages, pursuant to 29 U.S.C. § 216(b), in an amount to be proven at trial.

**B. MIGRANT AND SEASONAL
AGRICULTURAL WORKER PROTECTION ACT**

80. All facts alleged above are reasserted here in support of plaintiffs' cause of action set forth below.

81. Defendants intentionally violated the plaintiffs' rights under AWPA by:

1 a. failing to disclose in writing in their own language the terms and
2 conditions of employment at the time plaintiffs were recruited, in violation of 29
3 U.S.C. § 1821(a).

4 b. violating their working arrangement with plaintiffs without
5 justification. 29 U.S.C. § 1822 (c).

6 c. failing to ensure that housing owned or controlled by defendants
7 complied with applicable substantive Federal and State safety and health standards
8 in violation of 29 U.S.C. §1823 (a).

9 d. housing plaintiffs in facilities that had not been certified by any State
10 or local health authorities as meeting minimum safety and health standards, in
11 violation of 29 U.S. C. § 1823 (b).

12 e. firing Plaintiffs (all but Juan Lopez Gomez and Mariano Perez Perez)
13 for exercising their rights under the AWPA, in violation of 29 U.S.C. § 1855 (a).

14 f. knowingly providing false and misleading information regarding the
15 terms and conditions of employment, in violation of 29 U.S.C. §1821 (f);

16 g. failing to provide each plaintiff with pay statements that meet the
17 requirements of 29 U.S.C. § 1821 (d)(2);

18 h. failing to pay the wages owed to each plaintiff when due, in violation
19 of 29 U.S. C. § 1822 (a);

20 For each such violation of the AWPA, plaintiffs are each entitled to recover

1 their actual damages or up to \$500 per violation in statutory damages. 29 U.S.C. §
2 1854(c).

3 **C. WASHINGTON STATE FARM**
4 **LABOR CONTRACTORS ACT**

5 82. All facts alleged above are reasserted here in support of plaintiffs' cause
6 of action set forth below.

7 83. Defendants violated the Washington Farm Labor Contractor Act, RCW
8 19.30.010 *et seq.*, by making or causing to be made, false and misleading
9 representations to plaintiffs concerning the terms and conditions of employment in
10 violation of RCW 19.30.120(2).

11 84. Defendants violated their duties as farm labor contractors by:

12 a. Failing to provide written statements to plaintiffs at the time of
13 recruiting, soliciting or hiring, whichever occurred first, that complied with RCW
14 19.30.110(7);

15 b. Failing to comply with the terms and provisions of their agreements
16 and contracts with plaintiffs, in violation of RCW 19.30.110(5);

17 c. Failing to furnish plaintiffs each time they received a compensation
18 payment from defendants, a written statement itemizing the total payment and the
19 amount and purpose of each deduction therefrom, hours worked for work paid on a
20 piece rate basis, and for the work done under the Service Contract Act (41 U.S.C.
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1 §§351 through 401), a written statement of any applicable prevailing wage, in
2 violation of RCW 19.30.110(8).

3 85. Defendants violated FLCA by discharging plaintiffs (all but Juan Lopez
4 Gomez and Mariano Perez Perez) because they had made a claim against defendants
5 for compensation for the employees' personal services and had discussed or consulted
6 with an attorney concerning their rights under this Chapter, in violation of RCW
7 19.30.190 (1) and (4).

8 86. Plaintiffs have suffered injury as a result of each of these violations of
9 the Washington Farm Labor Contractor Act, in an amount to be proven at trial.

10 87. Based on each of these violations, each plaintiff is entitled to recover
11 his actual damages or statutory damages from defendants in the amount of \$500,
12 whichever is greater, pursuant to RCW 19.30.170(2).

13 D. WASHINGTON STATE WAGE LAW

14 88. All facts alleged above are reasserted here in support of plaintiffs'
15 cause of action set forth below.

16 89. Defendants violated Washington wage payment law by willfully
17 depriving plaintiffs of a part of their wages through unauthorized deductions, in
18 violation of RCW 49.52.050(2) and RCW 49.52.060, giving rise to a cause of
19 action under RCW 49.52.070.

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90. Defendants' failure to pay plaintiffs' wages when due was willful within the meaning of RCW 49.52.070, and plaintiffs are, therefore, entitled to all damages allowed under the Washington wage law, including double damages, in an amount to be proven at trial.

PRAYER FOR RELIEF

91. Plaintiffs ask this Court to Grant them the following relief:

a. Award each of the plaintiffs actual damages, or alternatively, statutory damages of up to \$500, whichever is greater, for each of defendants' violations of AWPA, pursuant to 29 U.S.C. §1854(c)(1);

a. Award each of the plaintiffs statutory damages of \$500 for each of defendants' violations of RCW 19.30.120 (2), 19.30.110 (7), and 19.30.110 (8), pursuant to RCW 19.30.170(2) (FLCA);

b. Award plaintiffs actual damages, or statutory damages of \$500 per plaintiff, whichever is greater, for each of defendants' violations of RCW 19.30.110(5) and RCW 19.30.190, pursuant to RCW 19.30.170(2) (FLCA);

c. Enter a finding that plaintiffs are entitled to satisfy any judgment awarded them out of the security deposit held by the Department of Labor and Industries pursuant to RCW 19.30.170 (9);

d. Award plaintiffs their unpaid minimum wages and an equal amount as liquidated damages, pursuant to 29 U.S.C. §216(b);

- 1 e. Award plaintiffs their unpaid wages, plus exemplary damages and
- 2 attorney fees, pursuant to RCW49.52.070;
- 3 f. Award plaintiffs their actual damages, including lost wages and
- 4 emotional distress, for their retaliatory discharge, pursuant to 29 U.S.C.
- 5 §1854 and RCW 19.30.170.
- 6 h. Award plaintiffs their costs and reasonable attorney fees in this matter
- 7 pursuant to 29 U.S.C. § 216(b), RCW 19.30.170(1), RCW 49.48.030, and any
- 8 other applicable grounds;
- 9 i. Award plaintiffs pre-judgment and post-judgment interest to the full
- 10 extent authorized by law; and
- 11 j. Award plaintiffs such other or further relief as the Court finds
- 12 appropriate and just.

13 Respectfully submitted, this 19th day of April, 2013.

14
15 NORTHWEST JUSTICE PROJECT

16 By: Michele Besso
17 Michele Besso, WSBA #17423

18 By: Michele Besso for
19 Mary Welch, WSBA #29832

20 Attorneys for Plaintiffs

21 COMPLAINT FOR DAMAGES - 19

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